

Under reconstruction! We apologize for the absence of certain materials.

THE LAST BASTION OF DEMOCRACY?

05 April 2003

We have been living under our new Parliament, the fourth in Ukraine's independent history, for one year now. Parliament reflects the real condition of our society, it being the focus of all the basic oppositions and conflicts during its development. The thorny path of its evolution, unfortunately, has not led it up to the shining heights of democracy. On the contrary, the democratic achievements of the early 1990s have been increasingly called into question, with authoritarian trends equally increasing.

The Verkhovna Rada has been unable to occupy the position within this country's political system which parliaments occupy in developed democracies. There have been both objective and subjective factors. These factors were reviewed in the Razumkov Center's political report "Parliament in Ukraine: Tendencies and Problems of Development" (National Security and Defense, Iss.2, 2003) and during a round table organized by the Razumkov Center and the Konrad Adenauer Foundation.

This article analyzes the most topical problems: the peculiarities of the Ukrainian system of power and the character of the relationships between the Verkhovna Rada and the President. The authors also dwell on the problem of political reform, thus contributing to its public or, better to say, expert discussion.

Down the Up Staircase

This could be an exact description of the Ukrainian Parliament's evolution over the years of independence. Here are some underlying negative trends.

Number one. The narrowing scope of constitutional competence and the decreasing role of the Parliament in the system of government both have an adverse effect on the development of democracy.

In the early 1990s, the system of government could be called an "all-round power of parliament". In the course of further democratic transformations, a part of irrelevant competences were supposed to be abolished or handed over to other institutions (the President, for instance).

But **there was no civilized redistribution of authority**. In fact, the whole process boiled down to the struggle for power between the President and Parliament. Neither would surrender (although it was the President who claimed he lacked powers). The Constitutional Treaty (1995) and the Constitution (1996) were adopted under pressure. As a result, **the system of government, designed by the Constitution, proved to be unbalanced, dualistic, and void of political irresponsibility.**

The President was vested with excessive authority. Via the system of appointment to key posts he controls the vertical line of command, without bearing political responsibility for their execution. There are actually two governments in Ukraine. One is the Presidential Administration, which really governs, and the other is the Cabinet of Ministers, which does what it is told.

Parliament lost more and more powers in those perturbations. The 1996 Constitution limits the mechanisms of its influence on forming the government and narrows the scope of its controlling functions. The specific controlling bodies - the Ombudsman and the Accounting Chamber - often run into a stone wall of uncooperative and even resistant executive institutions.

Number two. The relationship between the President and Parliament is unconstructive. His levers of influence on Parliament extending, the President tries to control it completely.

Why does it happen so? There are objective reasons - relations between the President and Parliament are insufficiently regulated by legislation, the nation has no traditions of parliamentarianism and democracy.

The main subjective factor is the President's desire to have a "controllable" parliament that would legislatively formalize his will, which has been the primary source of constant conflicts between L.Kuchma and the Verkhovna Rada. The history of these conflicts shows us that the instruments of his influence on the Verkhovna Rada are **systemic and illegitimate**. These instruments are as follows:

(1) influence on the type of electoral system. L.Kuchma has vetoed the election law five times, insisting on the preservation of the mixed electoral scheme [by which half the seats in parliament are contested by political parties, and half - by individual candidates]. He means to preserve his levers of administrative influence on elections of "non-partisan" representatives and on further control over them. Most of the non-partisan MPs who were elected in 2002 joined the pro-presidential faction "United Ukraine";

(2) influence on the process of parliamentary elections. Since 1998 we have repeatedly witnessed the employment of administrative resources during election campaigns. The purpose is to secure the election of pro-presidential forces and prevent the election of undesirable candidates or opposition parties. The Razumkov Center's forecasts about a much heavier reliance on administrative resources in the 2002 elections came true. Authorities bore down on candidates or parties and cloned political forces.

(3) influence on the process of election of the parliament's leadership. After the [March] 2002 elections, the pro-presidential forces put pressure on the newly elected MPs (through law enforcement agencies, tax raids on companies owned by some MPs), and thus managed to form the 226-strong situational majority, and with its votes - to elect the parliament's leadership, totally composed of pro-presidential representatives.

A similar attempt was made in December 2002, when the pro-presidential forces voted for the unseating of opposition representatives - heads of the standing committees. It was only after the opposition blocked the parliament's work and after intense negotiations that the former status quo was restored;

(4) influence on the parliament's internal structure. Immediately after parliament was elected, it was structured more or less accordingly to the structures of the represented parties and blocs. But later, under pressure from the President, some factions disappeared from the Parliament's political map. Instead, new ones appeared. The incomprehensible principles of forming the new factions cast doubts on the principle of the leadership's political responsibility. For example, the bloc "For a United Ukraine!" promised its voters 1.5 million new jobs. Now, as its faction in parliament has broken up, a natural question arises: who will answer for those pre-election promises?

It was under the influence of presidential structures that **the parliamentary majority, loyal to Kuchma, was formed**. ZN has cited numerous examples of MPs being forced into (out of) some factions through a stick-and-carrot policy: they were either offered serious money and stocks in state-run companies, or were blackmailed and pressured by law enforcement or tax agencies);

(5) restriction of opposition activities, including in Parliament. The President regards the opposition forces as his political enemies, rather than political opponents. Hence - the pressure techniques. The rights of the opposition are violated, its popular actions are blocked, the loyal mass media simply ignore such actions. It's enough to remember how the road police halted buses going to Kyiv for an opposition rally on September 16, 2002, and how the action was "covered" on TV;

(6) inadequate coverage of the Parliament's activity. The executive authorities consistently ignore the active legislation which requires live radio and TV broadcasts of parliament sessions. At the same time, the pro-presidential factions and groups that represent powerful financial-political structures, use both their own and state-run media channels, while the opposition has access to neither.

In periods of "especially unconstructive" relations between the President and Parliament, the pro-presidential mass media tend to increase the number of publications about Parliament's impotence, about selfish MPs squabbling for power and never caring a damn for the common people's problems. It's enough to look through 1996-1997 or 1999-2000 newspaper filings or remember Vadim Dolganov's "criminatory" TV programs. As a result, there are already 16.2% of Ukrainians who are convinced that Ukraine doesn't need the Parliament;

(7) influence on the Parliament's lawmaking activity, including steps to minimize parliamentary control. In violation of the Constitution, the President has repeatedly refused to sign the laws after his veto was overridden by Parliament (as it happened to the law on the Cabinet of Ministers). The lawmakers were "persuaded" to vote "correctly" through the agency of law enforcement, tax and controlling bodies.

The President vetoed the law on the Verkhovna Rada ad hoc investigative commissions and the amendments to the Constitution meant to extend the Accounting Chamber's controlling functions. Executive authorities are directly ordered not to cooperate with parliamentary ad hoc commissions. Last week L.Kuchma vetoed for the third time the law that provided for administrative punishment for ignoring lawful demands of members of parliament, the Ombudsman and the Accounting Chamber, or misinforming these;

(8) violation of the procedures of forming executive bodies or individual appointments, in which the Parliament is supposed to participate. A graphic example was the formation of the National Council for TV and Radio Broadcasting. The President didn't appoint "his" part of the Council for as long as twelve months, thus paralyzing it;

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(9) attempts to bypass Parliament and minimize its role through dubious referenda. This means of pressure was used successfully in 1995, 1996 and 2000, when the citizens were supposed to decide on issues that were unintelligible even to experts.

The "driving gear" for propelling Kuchma's personal interests was the Presidential Administration office, central and local governments. And in the session hall this job was often done by his permanent representatives in parliament.

However, **in spite of all attempts to turn Parliament into a controllable body and in spite of all its own drawbacks, it remains "the last bastion of democracy" in this country.** This body, due to its representative nature, is the most transparent and democratic decision-maker. The Parliament is the only rostrum from which the opposition forces can speak up and have a certain influence on the state policy. It is where pro-authority and opposition parties gradually form their "political nuclei".

It is extremely important for Ukrainian society that the Verkhovna Rada be the guarantor of democratic presidential elections, because the election of the new President will ultimately determine either free or "administered" democracy in Ukraine.

This is obviously understood by the President and his close circle, who recently initiated constitutional transformations aimed at substantially limiting the Parliament's competence.

The President's "Trojan Horse"

On March 5, 2003 the President submitted to popular consideration his draft law "On Amendments to the Constitution of Ukraine". MP Roman Zvarych, a member of the Constitutional Commission set up by the President, said during the round table meeting that the Commission never discussed the draft law. The publication of the document was a surprise even to the pro-presidential factions in Parliament. L.Suprun, a member of the Popular Democratic Party faction, said that nobody had told them about Kuchma's innovation, so her faction was undecided on the project.

Upon closer inspection, the project turns out to be aimed at a goal totally opposite to what the President declares. That is, at increasing the President's powers, not the Parliament's.

Even loyal experts (M.Pogrebinsky and V.Malinkovich) have drafted their own version of amendments to the Constitution, which has little in common with Kuchma's version.

It should be noted that the President's version incorporates provisions which formally conform to the model of a parliamentary-presidential republic: proportional elections to the lower house of parliament; the appointment and dismissal of the Prime Minister and other members of the Cabinet (with certain exceptions) by Parliament; the termination of a mandate, should an elected representative of a political party secede from its parliamentary faction.

But these ideas are completely canceled out by the general context, largely due to **the President's ample powers in appointing key executives and the introduction of the two-chamber model.**

The President retains the right to appoint the defense, the interior and other key ministers as well as governors. The latter fact is especially important, since it is electing loyal representatives to the upper house that would be task number one for local administrations during election campaigns.

The upper house is vested with such great powers that it appears really worthwhile running for a seat there. The upper house is supposed to have all the controlling functions, the right to appoint all civil servants (except members of government). Besides, the upper house would have the right to veto all bills passed by the lower house. At the same time, the upper house has no liabilities and may not be dissolved by the President.

The competence of the lower house would be reduced to adopting legal acts (the most important bills would still require approval by both houses), forming a part of the government, adopting national programs and setting the date of presidential elections. The lower house may be dissolved by the President, should it fail to form an active majority or a government, or to adopt the national budget.

In its relations with the President, the lower house would have no deterrents or counterbalancing mechanisms. The procedure of impeachment would be a lot bulkier, since **the decision on impeachment would have to be made by two-thirds of each house.** There is no mechanism of enacting bills if the President does not sign them in time. So in the triangle President - Upper House - Lower House, the latter has a ridiculously insignificant role.

And considering the possibility of adopting laws through a national referendum, it looks like we might as well do without a parliament. Other innovations (the reduction of parliament's membership [from 450 to 300 seats]; the extended period between elections [from four to five years], the older retirement age for Constitutional Court judges and the abrogation of the procedure of mandatory chairmanship rotation etc.) are appraised by many experts as clumsily covert mechanisms for prolonging the President's term in office.

This version of the constitutional reform has very few chances to collect enough votes in parliament, so the decision to offer it for a nationwide discussion could mean an attempt to indefinitely postpone the political reform.

There is another explanation: the "public discussion" (which actually is nothing but formal must-attend meetings) is supposed to "transform" into a national referendum on amending the Constitution.

The No-Choice Alternative

There is no alternative to a political reform. But there are alternative approaches. We maintain that any political reform should provide for the following:

Number one. Legal formalization of the proportional model of parliamentary elections, with lists of candidates drawn up by regional branches of political parties. This model would ensure the election of the most popular political leaders in their regions and increase the influence of local party organizations. The Constitution should provide for stripping a representative of a political party of his/her MP mandate in case of secession from the parliamentary faction of that party.

Number two. The Constitution should stipulate the right of the victorious parties to form the government. The government is to resign before the newly elected parliament. The party that has collected the biggest number of votes has the priority right to form the government; in case it is unable to do that within 15 days, this right is handed over to the runner-up political party; should the second attempt fail, the President is bound to appoint a provisional government, dissolve the parliament and announce new elections.

Number three. The constitutional term of "constructive non-confidence vote": the resignation of the active government presupposes the possibility of a new Prime Minister and a new Cabinet being named by the Parliament.

Number four. The constitutional right of Parliament to pass a vote of no confidence on all executives it appoints or gives consent to their appointment, which entails their resignation.

Number five. The adoption of the laws "On the Cabinet of Ministers of Ukraine" and "On the President of Ukraine", which would determine their competences and regulate their interactions with the Parliament.

Number six. The simplification of the impeachment procedure, i.e. the reduction of the required number of votes to 300. It is necessary to adopt a law on the impeachment procedure with detailed specifications.

Number seven. The reduction of the number of votes required to override the President's veto to 250. It should be stipulated by the Constitution that in case the President does not sign by a certain deadline the bill, the presidential veto on which has been overridden, the bill shall be signed and issued by the Verkhovna Rada Chairman within ten days. The list of conditions for initiating the impeachment procedure should include the violation by the President of the norm of timely signing and publication of laws the veto on which has been overridden.

Number eight. Higher efficiency of parliamentary control. This should require amendments to the Constitution which grant standing committees the right to exercise control over the observance of the Constitution and laws by bodies of central and local government. It is necessary to enact the law "On Verkhovna Rada Ad Hoc Investigative and Special Commissions".

It is already possible to proceed with some of the proposals that don't require amending the Constitution, in particular, the adoption of the proportional model of parliamentary elections. The constitutional changes could be based on the amendment bill which was drafted by MPs A.Matviyenko, O.Moroz, P.Symonenko et al, and which needs some

It is already possible to proceed with some of the proposals that don't require amending the Constitution, in particular, the adoption of the proportional model of parliamentary elections. The constitutional changes could be based on the amendment bill which was drafted by MPs A.Matviyenko, O.Moroz, P.Symonenko et al, and which needs some polishing.

Such formidable tasks take a lot of time and effort. But what is required above all is the political will of the political forces represented in Parliament. What may distract the attention of the major political players from the problems of political reform is the forthcoming presidential election campaign of 2004. A part of the pro-presidential forces may get so imbued with the ideas of Kuchma's project that all other alternatives will simply be blocked.

That would be the end of all hopes for a political reform in this country. Then Ukrainians would have to live with a pseudo-parliament under pseudo-democracy, until they start thinking of some non-parliamentary way to exercise their rights.

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